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**Glades Health Care Center and Unite! Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC. Case 12-CA-20506**

February 29, 2000

**DECISION AND ORDER**

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND HURTGEN

Pursuant to a charge filed on November 19, 1999, the General Counsel of the National Labor Relations Board issued a complaint on December 6, 1999, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 12-RC-8359. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, with affirmative defenses, admitting in part and denying in part the allegations in the complaint.

On December 27, 1999, the General Counsel filed a Motion for Summary Judgment. On December 30, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.<sup>1</sup>

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

In its answer the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of its objections to conduct alleged to have affected the results of the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

<sup>1</sup> The Respondent's response to the instant motion asserts that there is newly discovered evidence. However, that assertion was the subject of a motion to reopen the record in Case 12-RC-8359 for admittance of newly discovered evidence. That motion was denied by the Board on February 15, 2000.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a Florida corporation, with an office and place of business in Pahokee, Florida, has been engaged in the business of operating a nursing home.

During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$100,000 and purchased and received at its Pahokee, Florida facility goods valued in excess of \$5000 directly from points outside the State of Florida, and purchased and received goods valued in excess of \$10,000 directly from other enterprises located within the State of Florida, each of which other enterprises had received these goods directly from points outside the State of Florida.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. The Certification**

Following the election held July 7, 1999, the Union was certified on October 18, 1999, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time certified nursing assistants, dietary employees, housekeeping employees, laundry employees, maintenance employees, central supply clerk, medical records clerk, bed maker, ward clerk, and lobby persons employed by the Respondent at 230 South Barfield Highway, Pahokee, Florida; excluding all other employees, managerial employees, professional employees, confidential employees, office clerical employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

**B. Refusal to Bargain**

By letters dated October 21 and November 5, 1999, as well as in a telephone conversation, the Union requested the Respondent to recognize and bargain, and, since on or about October 21, 1999, the Respondent has failed and refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

**CONCLUSION OF LAW**

By failing and refusing on and after October 21, 1999, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate

unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondent, Glades Health Care Center, Pahokee, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Unite! Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time certified nursing assistants, dietary employees, housekeeping employees, laundry employees, maintenance employees, central supply clerk, medical records clerk, bed maker, ward clerk, and lobby persons employed by the Respondent at 230 South Barfield Highway, Pahokee, Florida; excluding all other employees, managerial employees, professional employees, confidential employees, office clerical employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Pahokee, Florida, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on

forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 21, 1999.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 29, 2000

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John C. Truesdale, Chairman

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Sarah M. Fox, Member

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Peter J. Hurtgen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

#### NOTICE TO EMPLOYEES

#### POSTED BY ORDER OF THE

#### NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Unite! Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the Na-

tional Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time certified nursing assistants, dietary employees, housekeeping employees, laundry employees, maintenance employees, central supply clerk, medical records clerk, bed maker, ward clerk, and lobby persons employed by us at our 230

South Barfield Highway, Pahokee, Florida; excluding all other employees, managerial employees, professional employees, confidential employees, office clerical employees, guards and supervisors as defined in the Act.

GLADES HEALTH CARE CENTER